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General Statement of the United States: Forced Disappearances Text

As the task of the Working Group draws to a close and responsibility is passed to the Human Rights Commission to consider further work, we express sincere appreciation to the Chair and his team, including the Secretariat, for your enormous dedication, skill, and industriousness during negotiations on a binding instrument to combat this heinous crime.

We also commend the State delegations, the independent experts, the ICRC, and non-governmental organizations for their intense commitment, expertise, tireless work, and collegiality throughout, and give special thanks to the families of the disappeared for bearing witness to this terrible scourge.

At the same time, as we have said before, in order to produce a document that will attract the widest possible number of states parties, treaty negotiations should be deliberate, unhurried, and careful, allowing for full expression of views by all representatives, with every effort to achieve a consensus text that can be applied in all legal systems.

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We regret that often the pace of negotiations, among other factors, has resulted in a document that includes provisions the United States does not support, and to which we have registered key reservations. These reservations include, but are not limited to the following:

Preambular paragraph 7 and Article 24(2) on the RIGHT TO THE TRUTH. This is a notion that the United States views only in the context of the freedom of information, which is enshrined in Article 19 of the ICCPR, consistent with our long-standing position under the Geneva Conventions. We are grateful for the good will shown in seeking compromise language in the Preamble, but our reservations remain concerning this issue, including with respect to Article 24 (2), which we read in this same light.

We have serious concerns about Article 2 which we firmly believe needs a more focused DEFINITION that includes the element of intentionality. This is the core of the Convention and we believe it needs a great deal more work.

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Article 5 requiring domestic legislation criminalizing CRIMES AGAINST HUMANITY remains insufficiently defined and inappropriate to an operative paragraph in the text.

As we have noted, the lack of a DEFENSE OF SUPERIOR ORDERS in Article 6(2) could unfairly subject unwitting military and law enforcement personnel to the possibility of prosecution for actions that they did not and could not know were prohibited.

Despite some modifications, the specific requirements for a STATUTE OF LIMITATIONS in Article 8 continue to present a problem of implementation within a Federal system like that of the U.S. Likewise, Article 4 should not be read to require our various domestic legal systems to enact an autonomous offense of enforced disappearance, which is unnecessary and, from a practical standpoint, extremely burdensome and unworkable in the United States.

We also note that our continuing objection to Article 9 (2) concerning “FOUND IN” JURISDICTION has not been satisfactorily addressed.

We have clearly stated for the record our continuing reservation to the absence of language in Article 16 explicitly conforming this text to

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the principle of NON-REFOULEMENT articulated in the 1951 Refugee Convention.

We find that Article 17 concerning ACCESS TO PLACES OF DETENTION, despite significant improvement, retains the possibility of conflict with constitutional and legal provisions in the laws of some state parties.

Finally, we remain unconvinced that the appropriate vehicle for implementation of this instrument is a NEW TREATY MONITORING BODY.

Despite our continuing reservations, let me reiterate to you, Mr. Chairman, and your magnificent staff, the appreciation of my delegation for your outstanding leadership and the warm, cooperative and collegial spirit which defined these negotiations.

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